IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.7127 of 2007

Sou. Malan Mahadeo Shinde — Petitioner
Vs.
Shri Haridas Kanase & ors. — Respondents

Mr.S.S.Tambekar for petitioner.

CORAM: B.H.MARLAPALLE, J.

December 5, 2007.

P.C.

. Heard Mr.Tambekar, the learned counsel for the petitioner.

. The petitioner had filed Complaint (ULP) No.332 of 1997 and in the same the employer i.e. M/s. Arvind Cotspin Ltd. moved an application on 6/1/2005 at Exhibit C-20 and stated that the complainant was employed through a contractor and, therefore, there was no employer - employee relationship between the company and the complainant. The application prayed for dismissal of the complaint. On the said application the learned Judge of the Labour Court called for say of the complainant's Advocate and on 16/1/2005 the learned Advocate submitted his say in the following words:

"No objection to dispose of the complaint.".

Consequently on 21/1/2005 the learned Judge of the Labour Court passed an order reading as under:

"In view of pursis below Ex. C-20, matter stands disposed of as settled."

. Revision Application No.113 of 2006 came to be filed challenging the order dated 21/1/2005 which disposed the complaint as settled and the said revision has been dismissed by the learned Member of the Industrial Court. Hence this petition under Article 227 of the Constitution.

. The learned Member of the Industrial Court held that in a complaint of unfair labour practice filed against the contractor and the principal employer or the principal employer alone, if employer - employee relationship is disputed by the principal employer, the complainant will have to get the dispute decided independently either under the provisions of the I.D. Act or B.I.R. Act and the complaint would not be maintainable. The Industrial

Court further held that the order passed on 21/1/2005 disposing off the complaint as settled was not a judgment or order. It is not necessary to consider the legality of this observation and it is a fact from the record that the complainant gave consent for disposal of the complaint as not maintainable. Though the learned Judge of the Labour Court was in error in holding that the complaint is disposed as settled, the fact remains that the petitioner - workman had given consent for disposal of the complaint as not maintainable. Mr.Tambekar, the learned counsel submitted that the Advocate concerned was not instructed to file said Say and he acted without instructions. This cannot be a ground to challenge the order passed by the Labour Court disposing the complaint and the complainant's remedy may be against the advocate. So long as the complainant was represented through an advocate, written say filed by the advocate goes with the presumption that the same was filed under instructions. Hence there was no case made out for restoration of the complaint i.e Complaint (ULP) No.332 of 1997. The view taken by the Industrial Court in dismissing the revision application cannot be termed as perverse or erroneous on the face of the

record and thus no interference is warranted under Article 227 of the Constitution in the same.

. Petition is rejected summarily.

(B.H.MARL